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2017/0168 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Republic of Seychelles amending the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Regulation (EU) No 610/2013 of 26 June 2013[1] (hereinafter: the SBC amendment) amended the Convention implementing the Schengen Agreement[2] (CISA), Regulation (EC) No 562/2006[3] (Schengen Borders Code [SBC]) and Regulation (EC) No 810/2009[4] (the Visa Code) and – among others – re-defined the concept of 'short-stay' for third-country nationals in the Schengen area. As from 18 October 2013, for third-country nationals – irrespective of being visa required or exempt – who intend to travel to the Schengen area for a short-stay, the maximum duration of authorised stay is defined as '90 days in any 180-day period'. Contrary to the definition in force until 18 October 2013 (three months during a six-month period from the date of first entry), the new concept is more precise by setting the duration in days, instead of months. Moreover, the term 'from the date of first entry' which gave rise to many uncertainties and questions has been dropped from the definition.

The SBC amendment has introduced all the necessary changes in the EU's visa and borders *acquis*, i.e. the CISA, the SBC, the Visa Code and Regulation (EC) No 539/2001[5]. However, the concept of short-stay is also enshrined in international agreements concluded by the European Union. The visa waiver agreements concluded with Antigua and Barbuda[6], the Bahamas[7], Barbados[8], Brazil[9], Mauritius[10], Saint Kitts and Nevis[11] and Seychelles[12] still refer to the old definition ('three months during a six months period following the date of first entry'[13]) when defining the duration of visa-free stay.

On 16 July 2014 the Commission adopted a recommendation for a Council Decision for authorising the opening of negotiations for amending the short-stay visa waiver agreement between the European Union and the above mentioned countries[14], which the Council adopted on 9 October 2014.[15] The purpose was to implement vis-à-vis these seven countries the new definition of short-stay as provided by the SBC amendment. Furthermore, defining 'short-stay' in the visa waiver agreements in terms of *days*, rather than in *months*, is less complex to be

1 OJ L 182, 29.06.2013, p. 1.
2 OJ L 239, 22.09.2000, p. 19.
3 OJ L 105, 13.4.2006, p.1.
4 OJ L 243, 15.9.2009, p.1.
5 OJ L 081, 21.3.2001, p.1.
6 OJ L 169, 30.6.2009, p. 3.
7 OJ L 169, 30.6.2009, p. 24.
8 OJ L 169, 30.6.2009, p. 10.
9 With Brazil the EU concluded two agreements. One for holders of ordinary passports (OJ L 255, 21.9.2012, p. 4) and a separate one for holders of diplomatic, service and official passports (OJ L 66, 12.3.2011, p. 2).
10 OJ L 169, 30.6.2009, p. 17.
11 OJ L 169, 30.6.2009, p. 38.
12 OJ L 169, 30.6.2009, p. 31.
13 Cf. "Purpose" and "Duration of stay" in the agreements.
14 COM(2014) 468 final.
15 Council Decision authorizing the Commission to open negotiations for amending the short-stay visa waiver agreements concluded between the European Union/Community and Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, the Federative Republic of Brazil, the Republic of Mauritius, the Federation of Saint Kitts and Nevis and the Republic of Seychelles, adopted by Council on 09.10.2014.

verified and calculated by electronic/IT means, and thus more fitting for centralised border management systems, such as the proposed Entry/Exit system (EES)[16].

Following the authorisation of the Council, the Commission started negotiations to amend the visa waiver agreements with the seven countries (Antigua and Barbuda, the Bahamas, Barbados, Brazil, Mauritius, Saint Kitts and Nevis and Seychelles).

The negotiations with the Republic of Seychelles were successfully finalised by the initialling of the amending agreement on 15 July 2016. Both parties have agreed to adopt the new definition of 'short-stay' throughout the visa waiver agreement between the EU and the Republic of Seychelles. In addition, the agreement entails the modification of a few technical details (see further below), but all amendments are insignificant from the traveller's point of view.

The specific situation of the United Kingdom and Ireland is reflected in the preamble of the agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The agreement requires approval of both contracting parties in accordance with their respective procedures. On the part of the Union, this requires Council decisions on the signing and conclusion of the agreement.

This proposal is submitted to the Council in order to authorise the conclusion of the Agreement to amend the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver.

The agreement ensures legal coherence as well as harmonisation among Member States, by adhering to the new definition of short-stay as is provided by the SBC amendment, which provides a clear-cut interpretation of 'short-stay'.

The legal basis for this proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218 thereof.

The Union has no power to amend visa waiver agreements that would bind the four countries that are associated with the implementation of the Schengen *acquis*, including the common visa policy. In order to ensure a harmonised approach and implementation of the provisions on the duration of authorised stay in the Schengen area, a joint declaration is included in the agreement, stating the desirability for the Republic of Seychelles, on the one hand, and Iceland, Liechtenstein, Norway and Switzerland, on the other, to accordingly modify their existing bilateral visa waiver agreements.

The attached proposal constitutes the legal instrument for concluding the agreement. The Council will decide by qualified majority after the signing of the agreement, on behalf of the Union, by a person designated by the presidency of the Council and after having obtained the consent of the European Parliament in accordance with point (a) of the second subparagraph of Article 218(6) TFEU.

• Subsidiarity (for non-exclusive competence)

If one of the contracting parties to an international agreement is the European Union, then any amendment of such an agreement cannot be legally implemented by Member States

[16] COM(2016)194 final.

themselves. The visa waiver agreement with Seychelles has been concluded by the European Union. Hence, action at Union level is required.

Moreover, the conclusion of visa waiver agreements by Member States would affect the Union *acquis* in the field of visas (Article 3(2) TFEU).

- **Proportionality**

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely the modification of the existing visa waiver agreement between Seychelles and the Union.

3. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

4. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESMENTS

- **Stakeholder consultations**

On 9 October 2014, the Council adopted negotiating directives which authorized the Commission to open negotiations with the Republic of Seychelles to amend the visa waiver agreement between the two parties. Member States were informed of the progress of negotiations on meetings of the Visa Working Party.

5. OTHER ELEMENTS

- **Outcome of negotiations**

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft agreement is acceptable to the Union.

The final content of it can be summarised as follows:

a. Duration of Stay

The agreement provides for visa-free travel for the citizens of the European Union and for the citizens of the Republic of Seychelles when travelling to the other Contracting Party for a maximum period of 90 days in any 180-day period (instead of a maximum period of three months during a six months period following the date of first entry). The new definition is applied throughout the agreement between the European Union and the Republic of Seychelles on the short-stay visa waiver.

b. Final provision – suspension of the agreement (Article 8(4))

The agreement modifies the last sentence of Article 8(4) as follows: "A Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party should the reasons for that suspension cease to exist and shall lift that suspension." By adding the words 'and shall lift that suspension' to the current text, the amended agreement clarifies that a suspension of the visa waiver shall actually be lifted if the reasons that led to the suspension disappear. On this point, the amendment aligns the wording of the visa waiver agreement with the Republic of Seychelles with that of all other visa waiver agreements signed by the Union in 2015 and 2016. On 14 June 2016, the Visa Working Party was consulted on this amendment and no Member State raised any objections.

c. Replacing '*Community*' by '*Union*'

Since the entry into force of the Treaty of Lisbon, on 1 December 2009, the European Union alone has acquired a consolidated legal personality. However, the 'European Community' is still enshrined in international agreements that entered into force prior to the Treaty of Lisbon, as is the case for the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver. The amending agreement therefore replaces '*Community*' by '*Union*' throughout the visa waiver agreement.

d. Joint Declarations

Two joint declarations are attached to the agreement:

- On the interpretation of 90 days in any 180-day period, and;

- Concerning Iceland, Norway, Switzerland and Liechtenstein.

e. Entry into force

The agreement will enter into force on the first day of the 6th month following the date on which the last Contracting Party notifies the other that the ratification procedures have been completed. To ensure legal certainty and enable travellers to comprehend the law and to comply with it, a sufficiently long transitional period is necessary. Once ratification of the agreement has been completed, the six-month period will allow travellers to complete short stays that are still entirely calculated under the old definition, before entry into force of the new short-stay definition and its 180-day backward-looking reference period.

All other provisions of the existing agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver remain unaffected by the amending agreement, including the territorial scope.

6. CONCLUSION

In the light of the above-mentioned results, the Commission proposes that the Council approves, after obtaining the consent of the European Parliament, the Agreement between the European Union and the Republic of Seychelles amending the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2), in conjunction with point (a)(v) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[17],

Whereas:

(1) By Decision of 30 November 2009 the Council concluded the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver. The Agreement provides for visa-free travel for the citizens of the European Union and for the citizens of Seychelles when travelling to the territory of the other Contracting Party "for a maximum period of three months during a six months period".

(2) Regulation (EU) No 610/2013 of the European Parliament and of the Council[18] introduced horizontal changes in the Union's visa and border acquis and defined a short stay as a maximum of 90 days in any 180-day period.

(3) It is necessary that the Agreement between the Union and the Republic of Seychelles on the short-stay visa waiver incorporates this new definition in order to fully harmonise the Union's short-stay regime.

(4) The Commission has negotiated on behalf of the Union an agreement with the Republic of Seychelles amending the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver (the "Agreement").

(5) In accordance with Council Decision (EU) 2017/[…], the Agreement has been signed.

(6) This Decision constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision

[17] Consent given on […].

[18] Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council (OJ L 182, 29.06.2013, p. 1).

2000/365/EC[19]. The United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(7) This Decision constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[20]. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,

(8) The Agreement should therefore be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Seychelles amending the Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver (the "Agreement") is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall give, on behalf of the Union, the notification provided for in Article 2 of the Agreement[21].

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

[19] Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 1.6.2000, p. 43).

[20] Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

[21] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.